**Attachment: Improving the Digital Services Act**

*Suggestions put forward by the lobby-alliance of European Cities*

**Definitions and clarifications**

1. We appreciate and support the definition of what constitutes ‘illegal content’. But we consider it important to see clarified that this definition (Art. 2-g) includes also any content which is not in compliance with local or regional legislation in the Member States. In this sense, we propose to add an explicit reference to local and regional law in Article 2 (g) or in Recital 12.
2. Article 7 confirms the principle that no general obligations to monitor and no active fact-finding obligations can be imposed on providers of intermediary services. However, what precisely is to be understood under this principle? In Case C‑18/18 the ECJ ruled, for instance, that an order to remove information ‘the content of which is equivalent to the content of information which was previously declared to be unlawful’ does not impose a general obligation to monitor or to actively seek facts indicating illegal activity. Essential in the reasoning of the court is that the order does not require the provider to carry out an independent assessment, since the latter has recourse to automated content-management tools and technologies. It is well known that providers of STHR have the technology to remove or block by automated means STHR-listings which are unlawful because of objectively defined criteria by local, regional or national law. Such as in particular advertisements without any registration number, where a registration number is obligatory. The removal of such objectively defined illegal STHR-listings does not require any ‘independent assessment’ of such advertisements, this can be done automatically. In addition, there are also simple means by which infringements can be prevented. For example, providers could add an obligatory field for a registration number to be filled in by all users. In some cases, STHR-platforms already do so on a voluntary basis, in other cases however they do not. It seems unclear whether Art. 5 para 4 dealing with questions of prevention allows for a respective obligation of the providers. Hence, referring both to the cited ruling of the ECJ and also to Article 5 para 4 DSA, we urgently ask for a clarification about the tools and procedures available under the DSA to effectively prevent infringements by automated tools or other already available simple means where the applicable law is clear, unconditional and sufficiently precise.
3. Clarification should be given that competent local and regional authorities are understood to be a ‘relevant administrative authority’ and that they are as such entitled to issue orders ‘to act against illegal content’ (Article 8) and ‘to provide information’ (Article 9). Furthermore, we wish to see clarified that Art. 8 and 9 DSA are provisions obliging the platforms to comply with the respective orders. In addition Art. 15 para 2 of the E-Commerce Directive should not be deleted without substitution (see Art. 71 para 1 DSA): the DSA should expressly clarify that Member States are allowed to establish obligations for platforms to provide information.
4. It is an ongoing bottleneck in our communications with online platforms offering STHR, that data on specific advertisements which we need from the perspective of law-enforcement, are not shared by these platforms because of their (unjustified) claim that these data-demands would be incompatible with GDPR-standards. Hence, we propose a clarification in a recital that Article 9 is a legal basis in the sense of GDPR which can be used for orders to provide specific items of information for law-enforcement needs.
5. There is a need for better traceability not only of traders but of all users of online platforms. Goods and services offered by natural persons not acting in any professional capacity might violate the applicable rules in the same way or even worse than in the case of traders. Therefore, we suggest introducing obligations on the traceability of natural persons which can be less stringent than in the case of traders (Art. 22 DSA). Such an obligation should at least require that the platform obtains the name and address of the user. Without such extension to natural persons the principle ‘what is illegal offline is illegal online’ would be valid only for traders. Restricting the obligation only to traders also increases the risk of circumvention by traders pretending not to act in their business capacity.
6. On the obligation for online platforms to ‘act expeditiously’ upon obtaining information of the presence of illegal content on their platform (art 5, 1-b), it should be clarified what is to be considered as acting ‘expeditiously’. For city governments to be able to fulfil tasks that relate to the provision of public services and enforcement of applicable regulations timing is crucial[[1]](#footnote-1). We propose to set a maximum of 48 hours as of formal notice and/or otherwise demonstrated knowledge.

**Improved enforcement in the cross-border mechanism:**

On the handling of infringements and the proposed cross-border cooperation mechanism, the role of both the Digital Service Coordinators (DSC) and the role of the European Commission, we identify important gaps in the enforcement-system which need to be addressed. We strongly recommend the following adjustments to strengthen the foreseen procedures:

1. We need clearer timelines and actual deadlines for handling notices of illegal content (Articles 14 and 19). We propose 5 working days as for a mandatory reaction for Article 14 para 1 DSA notices and 48h for Article 19 notices (‘trusted flaggers’).
2. We propose a specific referral mechanism for all platforms, regardless of their size, when several (we propose a minimum of 3) Digital Services Coordinators (DSC) identify a pattern of non-compliance (for instance with orders according to Art. 8 and 9) and where on the basis of such repeated non-compliance these DSC’s can demand that the European Commission initiates an infringement procedure and imposes fines on the platform in question.
3. The cross-border cooperation mechanism according to Art. 45 should more clearly define the obligations of the Digital Services Coordinator of the Member State of establishment and allow for mandatory action.
4. We believe further clarification would be useful on how national, local and regional authorities should relate to their Digital Services Coordinator.

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1. Eurocities policy paper on the Digital Services Act: https://eurocities.eu/wp-content/uploads/2020/09/Eurocities-Policy-Paper-on-the-Digital-Services-Act.pdf [↑](#footnote-ref-1)